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August 23, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**Re: Crown Castle Fiber LLC v. Commonwealth Edison Company
Proceeding Number 19-169
Bureau ID Number EB-19-MD-004**

Ms. Dortch:

Pursuant to the Commission's June 21, 2019 Notice of Formal Complaint and 47 C.F.R. 1.729(e), Crown Castle Fiber LLC submits the attached Opposition To Respondent's Motion For Leave To Respond To Reply filed in the above-referenced proceeding.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in blue ink, reading "Ryan Appel", with a large, stylized loop at the end.

Ryan M. Appel

cc: Service List

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

CROWN CASTLE FIBER LLC,

Complainant,

v.

COMMONWEALTH EDISON COMPANY,

Respondent.

Proceeding Number 19-169

Bureau ID Number EB-19-MD-004

OPPOSITION TO RESPONDENT'S MOTION FOR LEAVE TO RESPOND TO REPLY

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TABLE OF CONTENTS

I.	COMED’S REQUEST FOR A SURREPLY IS PROHIBITED BY THE COMMISSION’S RULES.....	2
II.	THE ALLEGATIONS AND EXPLANATIONS IN CROWN CASTLE’S REPLY ARE NOT NEW AND ARE RESPONSIVE TO ISSUES RAISED IN COMED’S ANSWER.....	3
III.	CROWN CASTLE SHOULD BE PERMITTED TO FILE A RESPONSE IF COMED IS PERMITTED TO FILE A SURREPLY.	15
IV.	CONCLUSION.....	15

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OPPOSITION TO RESPONDENT’S MOTION FOR LEAVE TO RESPOND TO REPLY

Crown Castle Fiber LLC (“Crown Castle”), by and through undersigned counsel, and pursuant to 47 C.F.R. § 1.729(e), opposes Respondent Commonwealth Edison Company’s (“ComEd”) Motion for Leave to Respond to Reply.

The Commission should deny ComEd’s request to respond Crown Castle’s Reply. Contrary to ComEd’s assertion, Crown Castle’s Reply *did not* make “several new allegations about important issues to which ComEd has had no opportunity to respond.”¹ In its Reply, Crown Castle identified or clarified facts and law that directly respond to assertions raised in ComEd’s Answer. Therefore, ComEd’s request to deviate from the pleading timeline prescribed in the Commission’s Rules has no basis.

While Crown Castle contends that no additional response from ComEd is appropriate, if the Commission grants ComEd leave to file a surreply, Crown Castle should be granted leave to file a response.

¹ Motion to Leave to Respond to Reply at 1.

I. COMED'S REQUEST FOR A SURREPLY IS PROHIBITED BY THE COMMISSION'S RULES

Under the Commission's pole attachment rules,² and the decisions announced thereunder, ComEd's Motion is unsupported and inconsistent with the Commission's established procedures for pole attachment complaint proceedings.

In enacting the Pole Attachment Act, Congress directed the Commission to "institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation."³ Following this Congressional directive the Commission has held that "each party is responsible for submitting the appropriate data; it declines to file data at its own risk. . . . Except in unusual circumstances, we expect to resolve the issues using facts provided in the *authorized* filings."⁴

Fundamentally, ComEd is seeking to bolster its Answer, which was deficient, as Crown Castle demonstrated in its Reply. However, the mere fact that Crown Castle submitted facts and argument responding to ComEd's answer is not grounds for further pleading. The Commission's Rules contemplate that the complainant gets a complaint and a reply. The defendant gets only an answer. The Rules do not allow the defendant to get another bite at the apple and bolster its answer via a surreply.⁵

Critically, ComEd's Motion should be denied because under the Commission's rules Crown Castle, as the Complainant, is allowed to use its reply to submit facts and legal argument

² See 47 C.F.R. §§ 1.720–.740; .1401–.1415.

³ See S. Rep. No. 580, 95th Cong., 1st Sess. 21 (1978).

⁴ *Teleprompter of Fairmont, Inc. v. C&P Tel.*, 85 F.C.C.2d 243, 248 (1981) (emphasis added).

⁵ See, e.g., *Georgia Power Co. v. Teleport Communications Atlanta, Inc.*, 346 F.3d 1033, 1043-44 (11th Cir. 2003) (affirming FCC denial of pole owner's request for supplemental pleading, noting "FCC resolves pole attachment disputes according to a three-part pleading cycle").

that respond to ComEd's answer. Rule 1.728(a) states that the "reply shall contain statements of relevant, material facts and legal arguments that respond to the factual allegations and legal arguments made by the defendant."⁶ Thus, the mere introduction of facts or legal arguments in the Reply are not grounds for further pleading by ComEd. The Rule explicitly contemplates that the complainant will submit facts and legal argument in the reply in response to factual and legal assertions in the answer. As discussed below, that is all that Crown Castle did in the Reply.

Crown Castle did not introduce new claims that ComEd has not had an opportunity to answer.

II. THE ALLEGATIONS AND EXPLANATIONS IN CROWN CASTLE'S REPLY ARE NOT NEW AND ARE RESPONSIVE TO ISSUES RAISED IN COMED'S ANSWER

The following provides a point-by-point response to ComEd's assertions. For the Commission's convenience, Crown Castle quotes the relevant arguments from ComEd's Motion on each point.

COMED ASSERTION:

First, Crown Castle alleges for the first time in its Reply that "any" attachment that Crown Castle installs on ComEd's poles, including the wireless antennas Crown Castle installs but does not operate, are subject to federal Pole Attachment Act protections. This issue is thus similar to the "billboard" issue the Supreme Court declined to answer in *National Cable & Telecommunications Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327 (2002), and raises the additional question whether an attachment to be operated by another entity requires that other entity to file an attachment application. It is thus a critical issue of first impression for the Commission that requires full analysis.⁷

CROWN CASTLE RESPONSE:

Crown Castle's Reply did not make a new allegation regarding the application of Section 224 to its wireless node attachments and did not raise questions that amount to a "billboard"

⁶ 47 C.F.R. § 1.728(a).

⁷ Motion at 1.

issue. ComEd argued in the Answer that Crown Castle's antenna attachments are not protected under Section 224 and that the Commission's Rules because Crown Castle does not, itself, provide wireless services.⁸ In its Reply, Crown Castle responded to ComEd's assertion about the status of Crown Castle's antenna attachments by explaining that the definition of a pole attachment included "any" attachment by a provider of telecommunications service, and as a result, Crown Castle's antenna attachments are protected under Section 224 even if Crown Castle were not using the antennas to provide wireless service, itself.⁹ Moreover, Crown Castle emphasized that the antenna attachments are an integral part of its telecommunications offering, thus further demonstrating that the "wireless" equipment is a protected "pole attachment" under Section 224.¹⁰

Crown Castle's Reply was directly responsive to ComEd's legal and factual arguments. Crown Castle does not raise issues of attaching wholly unrelated equipment, nor does it raise any other issues that ComEd now tries to generate.

COMED ASSERTION:

Second, in response to issues raised by ComEd's Answer, the Reply for the first time fully explained Crown Castle's "RF transport service," and that explanation raises additional important issues to which ComEd has had no chance to respond. For example, although Crown Castle's Complaint suggested that Crown Castle was already using its wireless attachments to provide this RF transport service, the Reply states that Crown Castle only "plans to provide" RF transport service. Thus, all of the numerous antennas and other wireless attachments that are the subject to this Complaint proceeding apparently are not being used at this time to provide RF transport service or any service at all. Furthermore, while Crown Castle cites caselaw that it can provide service on a wholesale basis and still potentially qualify as a common carrier with attachment rights, Crown Castle fails to establish that it "holds [itself] out to service indifferently all

⁸ Answer pp. 2-6 (Aff. Def. ¶¶ 2-14).

⁹ Reply at 44-47.

¹⁰ Reply at 42-47.

potential users,” which is the other common carriage prerequisite specified in this ruling. It is impossible to determine whether a service that is provided to a limited class of customers is a telecommunications service or a private carrier service offering without examining the contracts underlying Crown Castle’s offering of this service. Crown Castle’s RF transport service agreements with wireless carriers for dedicated connectivity between cell sites and switching centers appear to be private carrier arrangements, as Crown Castle has not posted its standard terms and conditions on a readily accessible public web site. ComEd intends to request further discovery to review Crown Castle’s agreements with the wireless carriers for these services and to review Crown Castle’s FCC Forms 499A filed with the Universal Service Administrative Company (USAC). In any event, ComEd has not had a chance to respond to the very important threshold issues raised by these new allegations.¹¹

CROWN CASTLE RESPONSE:

There is no legitimate issue regarding Crown Castle’s telecommunications services that justify a surreply. Crown Castle responded to ComEd’s arguments and allegations, which are without any factual support and entirely based on changing theories and speculations. Doing so did not raise “new allegations.” Instead, ComEd is continuing its meritless attempt to engage in a fishing expedition to raise questions about Crown Castle’s status as a telecommunications provider where there are none

Crown Castle did not make any new allegation in the Reply that justifies ComEd’s new arguments or requests. As set forth in response to ComEd’s motion for additional discovery, Crown Castle has established a *prima facie* case that it is a provider of telecommunications services.¹² This is a critical issue for the Commission to thwart. ComEd is attempting to create a collateral attack on Crown Castle’s status as a means to derail the Complaint. The Commission has rejected such attempts in the past and should emphasize now that such strategies will not be countenanced. As the Commission held in *Fiber Technologies*, “***attachers are entitled to rely on***

¹¹ Motion at 2-3.

¹² Complaint ¶ 5; Reply at 39-40.

decisions by responsible regulatory agencies, such as franchise authorities in the case of cable system attachers, and public utility commissions in the case of telecommunications carriers, in establishing their status as entities entitled to pole access under section 224(f) of the Act.”¹³

The same arguments that ComEd now seeks to perpetuate as grounds for further briefing were rejected as irrelevant by the Commission in past cases. For example, whether Crown Castle may provide some services on a private carriage basis is irrelevant, as the Commission recognized in the *Fiber Technologies* decision.¹⁴ Indeed, ComEd’s strategy is identical to the rejected strategy employed by the pole owner in *Fiber Techs. Networks v. N. Pittsburgh Tel. Co.* For example, in *Fiber Technologies*, the North Pittsburgh Telephone Company (“NPTC”) contended that Fibertech “must show that it is actually supplying telecommunications service to a customer in NPTC’s territory to qualify as a ‘telecommunications carrier’ with a with a right of attachment under section 224 of the Act.”¹⁵ The Commission rejected this assertion, holding that a “‘telecommunications carrier’ is a carrier that *offers to provide* telecommunications on a common carrier basis, regardless of whether the carrier has actually supplied such service to a

¹³ *Fiber Technologies Network, L.L.C. v. North Pittsburgh Tel. Co.*, 22 FCC Rcd. 3392 ¶ 15 (2007) (emphasis added); *see also MAW Communications, Inc. v. PPL Electric Utilities Corp.*, Memorandum Opinion and Order, EB Docket 19-29, EB-19-MD-001, ¶13 (Aug. 12, 2019) (complainant established as telecommunications provider based on CPCN and affidavit from executive); *Salsgiver Telecom, Inc. v. North Pittsburgh Telephone*, Memorandum Opinion and Order, 22 FCC Rcd 9285, 9289-91, ¶¶9-12 (EB 2007) (holding that the complainant established a *prima facie* case that it is a “telecommunications carrier” with pole attachment rights under section 224(f) by submitting a certificate of public convenience and necessity and tariffs); *Paragon Cable Television Inc. v. FCC*, 822 F.2d 152, 153-54 (D.C. Cir. 1987) (upholding the FCC’s “ruling that possession of a valid franchise is a reasonable pre-condition for pole attachment” and that it is appropriate for the FCC to “employ a presumption of validity with respect to the franchising authority’s actions vis-a-vis the franchise”).

¹⁴ *Id.* ¶ 16.

¹⁵ *Id.* ¶19.

customer in the past.”¹⁶ ComEd’s argument is indistinguishable from NPTC’s rejected argument. The Commission’s holding clearly demonstrates that the identification of Crown Castle’s customers and the production of agreements with said customers are irrelevant in determining a carrier’s regulatory status.

Indeed, ComEd’s strategy of asserting baseless allegations is illustrated perfectly in this part of the Motion. In its Answer, ComEd argued that Crown Castle has not filed a tariff with the Illinois Commerce Commission.¹⁷ In its Reply, Crown Castle explained that it previously had tariffs on file, but that under Illinois law, Crown Castle was allowed to and did withdraw its tariffs.¹⁸ Now, ComEd accuses Crown Castle of having failed to post its terms and conditions on a website, citing 47 C.F.R. § 42.10. However, 47 C.F.R. §42.10 applies only to *interstate* interexchange providers. Crown Castle has a Certificate to provide *intrastate* telecommunications services, and thus 47 C.F.R. § 42.10 is inapplicable. ComEd cites wholly inapplicable regulations in an attempt to create the appearance of an issue that does not exist.

In addition, Crown Castle did not “for the first time” describe its RF Transport service in the Reply. Crown Castle explained “RF transport service” in its Complaint to the extent necessary to make its case.¹⁹ Only because ComEd’s strategy is to challenge Crown Castle’s “telecommunications” status did Crown Castle provide further clarification in the Reply to respond to specific arguments by ComEd.²⁰

¹⁶ *Id.* (emphasis in original).

¹⁷ Answer at 6-10 (¶¶15-27).

¹⁸ Reply at 47.

¹⁹ Complaint ¶ 7.

²⁰ Reply at 42-47.

Moreover, ComEd states that it “has not had a chance to respond to the very important threshold issues raised by these new allegations.” Yet ComEd does not identify any new allegations that Crown Castle raised with respect to its RF Transport Service. Crown Castle provided further explanation but did not raise any new allegations.

Finally, ComEd’s argument emphasizes the significant stretch that ComEd is making. ComEd states that “[a]lthough Crown Castle’s Complaint suggested that Crown Castle was already using its wireless attachments to provide this RF transport service, the Reply states that Crown Castle only ‘plans to provide’ RF transport service.” ComEd is essentially making a mountain of a mole hill. Crown Castle clearly has been providing service using the fiber and wireless equipment attached to ComEd’s poles since as early as 2013, as ComEd recognizes the Complaint set forth.²¹ ComEd is attempting to take two words from the Reply, used in the context of discussing how Crown Castle’s antennas are an integral part of its network and service,²² to create an issue about whether Crown Castle actually provides service. This was, at most, a minor statement that did not further describe the fact that Crown Castle’s existing attachments are used to provide service because that was not the focus of discussion in that part of the Reply. Ultimately, ComEd’s issue is irrelevant. To qualify as a provider of telecommunications services, whose attachments are protected by Section 224, Crown Castle would need only to “offer” telecommunications services.²³ A telecommunications provider is not required to have current customers.

²¹ Complaint ¶ 27 (Proceeding 19-169); Complaint ¶¶25, 27-70 (Proceeding 19-170).

²² Reply at 41-42.

²³ 47 USC 153(53) (“The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”); *see also Fiber Technologies Network*, 22 FCC Rcd. 3392, ¶ 19.

COMED ASSERTION:

Third, Crown Castle's Reply claims for the first time that the term "insufficient capacity," which is one of the four reasons ComEd may use to deny access to ComEd's poles, refers only to a lack of physical space on the pole. This novel and dangerous interpretation is subject to numerous rebuttals, including that it would entitle attachers to add load to already overloaded poles and create safety violations, that it is inconstant with Commission precedent, and that it is inconsistent with the revised opinion of Crown Castle's expert witness Nelson Bingel that pole loading analyses after all should not be performed to determine whether new attachments should be added to Non-Priority Red Tagged poles.²⁴

CROWN CASTLE RESPONSE:

Crown Castle's discussion in its Reply regarding the definition of "insufficient capacity" was submitted in direct response to ComEd's assertion in its Answer that it could deny access and demand payment because repairing its deteriorated poles was "expanding capacity." Specifically, ComEd incorrectly asserted that the red tagged poles "are at full capacity" and that "capacity is being expanded to accommodate Crown Castle's proposed attachments, the pole replacement or reinforcement is for the benefit of Crown Castle"²⁵ Crown Castle responded to this assertion by explaining that it is meritless because the Commission, as confirmed by the Eleventh Circuit, has defined "insufficient capacity" as meaning physical space on the pole, and explaining how the need for the pole owner to replace poles as the result of deterioration over time is not a "capacity" issue.²⁶

ComEd could have addressed this issue in its Answer when it asserted, out of hand, that its theory for denying access was based on capacity. Indeed, it appears that ComEd is attempting to add arguments now on the merits of this issue. Crown Castle did not advance a "novel and

²⁴ Motion at 3.

²⁵ Answer at 57-60, 62, 64, 66 (¶¶ 57, 61, 71, 125, 126, 137).

²⁶ Reply at 13-16.

dangerous” interpretation. Crown Castle’s argument would not “entitle attachers to add load to already overloaded poles and create safety violations.” Indeed, this argument now advanced by ComEd seeks to add new issues. ComEd has not claimed that the red tagged poles are “already overloaded.” ComEd is making unfounded statements in an attempt to divert the case into red-herring arguments. Crown Castle did not raise any new issue that would justify ComEd getting a new opportunity to advance its theories.

COMED ASSERTION:

Fourth, ComEd has had no opportunity to respond to new statements made in Mr. Bingel’s Reply Declaration, which was substantially revised after ComEd’s Answer pointed out that it was based on the wrong version of the NESC and on the mistaken assumptions that ComEd does not replace poles right away that endanger life or property and that the poles ComEd designates as “Priority” poles actually include poles that endanger life or property. New, objectionable Crown Castle allegations stem from the correction of these mistakes, including the contention that the 2002 and 2017 versions of the Code are not substantially different. Mr. Bingel adds new allegations about poles that have lost 80% or more of their original strength and about the “intent” of the NESC, and Mr. Bingel and Crown Castle misstate significant parts of ComEd’s Answer regarding pole treatments. Mr. Bingel also reverses himself in a way that contradicts his earlier statements and handicaps Crown Castle’s requested relief “to temporarily attach to red tagged poles.” Explaining he was “unclear” about the question when he wrote his initial Declaration, Mr. Bingel states: “I did not intend to encourage ComEd to use the load estimate to determine whether a Non-Priority Red Tag pole could still accommodate an additional attachment and indicated that by stating that the process ‘is not widely used in the industry.’”²⁷

CROWN CASTLE RESPONSE:

Mr. Bingel’s Reply Declaration was not “substantially revised.” Rather, in response to ComEd’s assertion that Mr. Bingel cited to the incorrect version of the NESC, Mr. Bingel *clarified* that there are no material differences between the 2002 and 2017 versions of NESC

²⁷ Motion at 3-4.

Rule 214.A.4 and 5 and that his original opinions were justified even under ComEd's theory.²⁸

He *did not* raise any new allegations, he responded to ComEd's assertions.

ComEd claims that "Mr. Bingel and Crown Castle misstate significant parts of ComEd's Answer regarding pole treatments." Yet ComEd does not provide any basis for this assertion or cite to any specific misstatement.

ComEd claims that "Mr. Bingel adds new allegations about poles that have lost 80% or more of their original strength and about the 'intent' of the NESC." That is incorrect.²⁹ Mr. Bingel's reference to poles that have lost 80% or more of their original strength was in response to new information from ComEd. Specifically, in its Answer, ComEd asserted that "priority" red tagged poles are any poles that have less than 33% of their original strength remaining, yet, ComEd also alleged that "priority" poles do not require immediate replacement. Mr. Bingel was addressing this assertion and the fact that under ComEd's argument, there are "priority" poles that may have lost more than 80% of the original strength, but that ComEd claims do not require immediate replacement.³⁰ This was not a new argument by Mr. Bingel. It was a response to new information alleged by ComEd in its Answer. As such, it was appropriate for reply and ComEd is entitled to no further briefing.³¹

²⁸ Reply, Attachment B, N. Bingel Reply Decl. ¶¶8-21.

²⁹ As a threshold matter, the paragraphs cited by ComEd do not all contain discussions of poles that have lost 80% of their original strength. *See* Motion n.12. Contrary to ComEd's assertion, paragraphs 8, 9, 18, and 39-43 of Mr. Bingel's Reply do not discuss poles that have lost 80% or more of their original strength.

³⁰ *See, e.g.*, Bingel Reply Decl. ¶¶ 13-14, 28 ("However, ComEd also asserts that its 'priority' poles are 'not such poles that must 'promptly' be 'repaired, disconnected, or isolated.'" (Answer at 40, ¶ 35.) This appears to mean that there is a category of poles that is not a 'priority reject' but are in fact an imminent threat to life so as to finally require replacement by ComEd. Yet, within ComEd's 'priority' group are poles that have lost as much as 80% or 90% or more of their original strength").

³¹ Reply, Attachment B, N. Bingel Reply Decl. ¶¶ 13, 28-29.

Indeed, Mr. Bingel makes clear in his Reply Declaration that in his original Declaration he pointed out that ComEd had not provided details, and as a result Mr. Bingel and Crown Castle were limited in their ability to discuss issues.³² Thus, to the extent Mr. Bingel was able to address some issues in his Reply it was because ComEd had added new information in its Answer. Ultimately, ComEd has provided no basis for the claim that Mr. Bingel adds new allegations regarding the “intent” of the NESC, and to the extent he discussed the NESC it is in response to ComEd’s arguments in its Answer.³³

Finally, ComEd provides no basis for the claim that “Mr. Bingel also reverses himself in a way that contradicts his earlier statements and handicaps Crown Castle’s requested relief ‘to temporarily attach to red tagged poles.’” ComEd provides no specific citation that would allow Crown Castle or the Commission to understand the basis for this allegation. Again, Mr. Bingel’s Reply Declaration was directly responsive to allegations made by ComEd in its Answer, and as a result, no surreply is permitted.

COMED ASSERTION:

Fifth, the Reply requests self-help remedies that inappropriately appear to include pole replacements, thus asking the Enforcement Bureau on delegated authority to grant relief that the full Commission refused to grant in the OTMR Order.³⁴

CROWN CASTLE RESPONSE:

ComEd does not provide any citation to the Reply to explain the basis for such a claim. Thus, it is impossible for Crown Castle or the Commission to know exactly what ComEd asserts

³² Bingel Reply Decl. ¶ 24 (“my declaration is making clear that in fact ComEd had not been forthcoming with details”).

³³ Bingel Reply Decl. ¶¶ 7-21.

³⁴ Motion at 4.

is the new claim raised by Crown Castle. Indeed, careful reading of ComEd's statement reveals that ComEd is not even definitive in what it is alleging. It claims that Crown Castle requests self-help remedies that "appear to include pole replacements."

Indeed, in the Complaint, Crown Castle clearly requested the Commission to order "ComEd to allow Crown Castle to hire, control, and direct approved third-party contractors to complete all pre-construction surveys, issue make-ready estimates, and perform make-ready on poles applied for by Crown Castle."³⁵ The need for the Commission to order significant remedies to cure ComEd's wholesale failure to act has been raised from the beginning. Moreover, this is not a situation like the OTMR Order. This is a case where there is undisputed proof that ComEd has failed to act in a timely manner on hundreds of applications covering thousands of poles. The Commission is free to craft a remedy in such a case that may be different than the generally applicable rules. Thus, ComEd's assertion now that it should be provided a surreply on this issue is meritless.

COMED ASSERTION:

Sixth, Crown Castle's Reply for the first time fully explains the connections between the entities that signed the three agreements at issue and complainant Crown Castle, and explains for the first time the authority these intermediate entities had through the years to provide services in Illinois. The Reply explained these connections only because ComEd's Answer noted the numerous deficiencies in Crown Castle's Complaint. ComEd should be entitled to respond to these new allegations, which should have been included in Crown Castle's Complaint in the first place.³⁶

CROWN CASTLE RESPONSE:

Crown Castle did not raise new allegations regarding its corporate structure; it provided additional explanation and clarification regarding Crown Castle's connection to Sunesys, Inc.,

³⁵ Complaint ¶ 201.

³⁶ Motion at 4-5.

Sidera Networks, LLC, and NextG Networks of Illinois, Inc. in its Complaint.³⁷ This detail was provided in response to assertions raised by ComEd in its Answer. Despite admitting that it has allowed Crown Castle to attach wireless and wireline attachments to poles for the past several years, in its Answer, ComEd now claims that it does not have a pole attachment agreement with Crown Castle, and that the companies did not provide notice of assignment of the pole attachment agreements.³⁸ Crown Castle's Reply responded to that accusation by demonstrating that no assignment or transfer had ever occurred that required Crown Castle to provide notice to ComEd.³⁹

Ultimately, the fundamental issue was resolved in the Declaration of Rebecca Hussey, which was appended to Crown Castle's Complaint as Attachment A. Exhibit 6 of the Declaration are the Certificates of Authority issued to RCN New York Communications, LLC.⁴⁰ Exhibit 5 of the Declaration explicitly stated that Certificates of Service Authority "were granted in the name of RCN New York Communications, LLC, which changed its name to Sidera Networks, LLC, which subsequently changed its name to Lighttower Fiber Networks II, LLC."⁴¹ The Declaration further provided that "[t]he name of Lighttower Fiber Networks II, LLC has been changed to Crown Castle Fiber LLC."⁴² Accordingly, ComEd easily could have addressed this issue in its Answer.

³⁷ Reply at 50-58.

³⁸ Answer pp. 11-14 (¶¶ 28-32).

³⁹ Reply at 50-58.

⁴⁰ Complaint, Attachment A, Exhibit 6, CCF102 to CCF107.

⁴¹ Complaint, Attachment A, Exhibit 5, CCF89.

⁴² Complaint, Attachment A, Exhibit 5, CCF95.

III. CROWN CASTLE SHOULD BE PERMITTED TO FILE A RESPONSE IF COMED IS PERMITTED TO FILE A SURREPLY.

Crown Castle opposes ComEd's Motion because no further response is warranted by the circumstances and is prohibited by the Commission's Rules. The Commission's pole attachment complaint pleading timeline was created to provide the Complainant an opportunity to reply to allegations raised in the Answer.⁴³ Allegations made by Crown Castle in its Reply were in response to positions raised by ComEd in its Answer, as permitted by the FCC rules.⁴⁴

However, if Commission allows ComEd to file a surreply to Crown Castle's Reply, Crown Castle should be allowed to file a response to ComEd's surreply. Under the Commission's Rules, the complainant is entitled to the final reply. ComEd should not be allowed to circumvent the rules with its current request.

IV. CONCLUSION

Accordingly, the Commission should deny ComEd's Motion to Leave to Respond to Reply in Proceeding 19-169.

Respectfully submitted,

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⁴³ 47 C.F.R. § 1.728.

⁴⁴ *Id.*

Robert Millar
Rebecca Hussey
Crown Castle Fiber LLC

Date submitted: August 23, 2019

RULE 1.721(m) VERIFICATION

I have read Complainant's Opposition to Motion for Leave to Respond to Reply filed by Crown Castle Fiber LLC on August 23, 2019 in the above-referenced proceeding. To the best of my knowledge, information, and belief formed after reasonable inquiry, the Opposition is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. The Opposition is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.

Respectfully submitted,

/s/ T. Scott Thompson

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Attorney for Crown Castle Fiber LLC

Date submitted: August 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2019, I caused a copy of the foregoing Opposition to Respondent's Motion for Leave to Respond to Reply to be served on the following (service method indicated):

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